IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 10198 of 2007(L)

AS.5/2006 of SUB COURT, HOSDRUG
OS.257/2002 of MUNSIFF COURT, HOSDRUG

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PETITIONERS:

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1. N.PARVATHI,
   W/O.H.VASUDEVA BHAT, 'USHUS',
   MUTHAPPANTHARA IN BALLA VILLAGE, HOSDURG.

2. H.V.MANOHARAN, S/O.H.VASUDEVA BHAT,
   'USHUS', MUTHAPPANTHARA IN BALLA VILLAGE,
   HOSDURG.

3. H.V.UDAYASHANKER,
   S/O.H.VASUDEVA BHAT, 'USHUS',
   MUTHAPPANTHARA IN ABLLA VILLAGE, HOSDURG.

4. H.V.USHA,
   S/O.H.VASUDEVA BHAT, 'USHUS',
   MUTHAPPANTHARA IN BALLA VILLAGE, HOSDURG.

5. H.V.VINOD,
   S/O.H.VASUDEVA BHAT,
   'USHUS' MUTHAPPANTHARA IN BALLA VILLAGE,
   HOSDURG.

BY ADV. SMT.SADHANA KUMARI ESWARI
SMT.GISA SUSAN THOMAS

RESPONDENTS:

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1. K.RAJEEVI, W/O.RAMAN NAIR,
   MUTHAPPANTHARA, CHEMMATTAMVAYAL, BALLA VILLAGE,
   HOSDURG TALUK, KANHANGAD.

2. K.RAMESHAN, S/O.RAMAN NAIR,
   MUTHAPPANTHARA, CHEMMATTAMVAYAL,
   BALLA VILLAGE, HOSDURG TALUK, KANHANGAD.

3. K.DINESH,
   *** S/O.(RAMAN NAIR),
   MUTHAPPANTHARA,
   CHEMMATTAMVAYAL, BALLA VILLAGE,

HOSDURG TALUK, KANHANGAD.

***RAMAN NAIR IS CORRECTED AS RAMA NAIK AS PER ORDER ON I.A.5625/07 DT. 13.6.2007

BY ADV. SRI.D.KRISHNA PRASAD
SRI.M.HARISHARMA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE COMMISSIONER'S REPORT

EXT.P2: -DO- OF THE OBJECTION TO COMMISSIONER'S REPORT

EXT.P3: THE COPY OF THE RESPONDENTS OBJECTION TO COMMISSIONER'S REPORT

EXT.P4: THE COPY OF THE PETITION IN FIRST APPEAL FILED UNDER ORDER 41 RULE 27 OF C.P.C DT. 8.3.2007

EXT.P5: -DO- OF THE SALE DEED DT. 14.12.1948

EXT.P6: TRUE COPY OF THE BUILDING LICENCE DT.13.9.06

EXT.P7: -DO- OF THE BUILDING TAX RECEIPT DT.7.5.1999

EXT.P8: -DO- OF THE RESPONDENT'S OBJECTION TO THE APPLICATION FILED UNDER ORDER 41 RULE 27

EXT.P9: -DO- OF THE ORDER OF THE LEARNED TRIAL COURT JUDGE DT. 9.3.2007

jj /TRUE COPY/

P.A.TO JUDGE

M.N. KRISHNAN, J.

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W.P.(C) No. 10198 OF 2007 L
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Dated this the 13th June, 2007

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Hosdurg, in A.S. No. 5/06 refusing to receive an additional document produced in evidence. The learned counsel for the writ petitioners submits that the original of the document was produced before the bank and therefore the predecessor-in-interest of the applicants was not able to produce that document and further they came to know about the litigation and the other aspects only recently and as these documents are necessary for a proper appreciation of the matter in appeal it may be received in evidence. The learned counsel in fairness of things submits that they will not ask for a remand on the ground of production of that document. It is recorded. Since these persons were not parties to the proceeding and as they have to continue even for the laches of the father they need not be penalised and a valuable right of the other side is not going to be taken away if really it is necessary to resolve the controversy between the

parties. Therefore the order under challenge is set aside. The writ petition is allowed and the Subordinate Judge, Hosdurg, is directed to receive the documents under Order XLI Rule 27, C.P.C. It is made clear, if the other side wants to challenge the veracity of the documents by production of any other documents they will also be permitted to produce the same and that can be received in evidence by the court and thereafter dispose of the matter in accordance with law. The Subordinate Judge shall try to dispose of the matter as expeditiously as possible.

M.N. KRISHNAN
JUDGE

jan/